

# “CAN I TOUCH YOUR HAIR?” EXPLORING DOUBLE BINDS AND THE BLACK TAX IN LAW SCHOOL

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INTRODUCTION .....	29
I.THE LAWYERS .....	31
A. Passed The Bar: Black Women Lawyers from Past to Present .....	31
B. Behind The Bar: Black Women Law Students .....	35
II.THE SURVEY .....	36
A. Response Rates .....	38
B. Potential Career Paths .....	38
C. Networking: The Value of Human Capital.....	39
D. Indicators of Racial and Gender Bias .....	41
E. Law Schools.....	43
III.CONCLUSION.....	48

“It is not our differences that divide us, it is our inability to recognize, accept,  
and celebrate those differences.”<sup>1</sup> - Audre Lorde, 1986.

## INTRODUCTION

Today’s trend in the diversity conversation focuses on inclusion as the basis for achieving substantive diversity; that is, the elements of equality go beyond mere opportunity to participate, but strive toward equal and meaningful participation.<sup>2</sup> Gone are the days where we accept the dispassionate ambivalence of diversity in the form of numbers and token faces. Therefore, it is imperative that the legal community continues the discourse on intersectionality—not just in law firms and fortune 500 companies, but also in government, legal nonprofits, and law school. Further, intersectionality comprises more than just gender and color; socioeconomic status, sexual orientation, disability, and other identities affect today’s lawyers.

Intersectionality<sup>3</sup> is a constant reality within the legal community, yet this conversation

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<sup>1</sup> Audre Lorde, BRAINYQUOTE.COM, [http://www.brainyquote.com/quotes/quotes/a/audrelorde390\\_625.html](http://www.brainyquote.com/quotes/quotes/a/audrelorde390_625.html) [<https://perma.cc/J9GB-5HDU>] (last visited November 15, 2016).

<sup>2</sup> Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1105-06 (2011) (“Substantive Diversity: denotes the idea that formal diversity...is merely the first, necessary step in achieving the goals of diversity, but is insufficient. Rather diversity efforts must also include elements of equality beyond mere opportunity to participate, including equal [and] meaningful participation.”).

<sup>3</sup> *Geek Feminism Wiki, Intersectionality*, GEEKFEMINISM.WIKIA.COM, <https://perma.cc/ATG4-9PWX> (Intersectionality is a concept used to describe the ways in which oppressive institutions are interconnected and cannot be

has only just begun to scratch the surface. If legal scholars dig deeper into the individual identities and circumstances of its lawyers, they will find that each experience has a powerful narrative. Law school is the inception of every lawyer's experience, yet rarely is it the starting point for conversations on lawyers' experiences. It is my argument that if we explore the experiences of law students within the context of legal education, we will find that the issues law students face parallel those faced by legal professionals.

As one of twenty-six Black women in a law school comprised of 815 law students, I argue that our experience is different from that of other students.<sup>4</sup> Intersectionality affects Black women, as it does all women of color, differently.<sup>5</sup> "There is no singular coherent, 'women law students' experience,' but instead a range of experiences as diverse as the women themselves, and . . . this diversity of experiences sheds an important light, in context, on reported feelings of alienation, isolation, and silencing in law school."<sup>6</sup> It is my position this experience is very similar, if not the same, as that of Black women already in the profession, and importantly, that law school is the place where we can intervene to change it.

Legal education purports to be a professional meritocracy, with its systematic rankings and its anonymity.<sup>7</sup> Law school has a reputation as *the* institution of higher learning for forward-thinking, equality-seeking individuals.<sup>8</sup> Therefore, it is the legal community's duty to recognize the experiences of its diverse law students. Considering the position that law schools occupy within the legal profession, they are specially placed to create social change, at least nominally, and law schools, therefore, should attempt to effectuate such change.<sup>9</sup> This process should begin by addressing race and gender issues in classrooms, allowing students to understand one another, and different viewpoints.<sup>10</sup>

Part One of this paper looks at Black women's experiences in the legal profession. The purpose is to paint a picture of intersectionality for Black women specifically, and not as part of a larger conversation about women of color generally. The second part consists of a survey that I conducted at Michigan State University College of Law ("MSU Law") about the experiences of Black women law students.<sup>11</sup> The survey explores the effects of the intersectionality of race and

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examined separately from one another. The concept first came from legal scholar Kimberlé Crenshaw in 1989).

<sup>4</sup> Memorandum from the Office of Student Engagement to the Student Body on MSU Law Spring Enrollment Summary of Degree Programs (Mar. 2015) (on file with Michigan State University College of Law Library), [hereinafter MSU Law Summary] (listing the demographics for each degree program as of Spring 2015).

<sup>5</sup> See generally Eli Wald et al., *Looking Beyond Women's Gender: Women's Experiences at Law School*, 48 TUL. L. REV. 27 (2012) ("explor[ing] the interplay between gender identity and racial, cultural, and ethnic identity as well as socioeconomic background, intellectual self-esteem, and familial support systems to investigate the experience of women law students").

<sup>6</sup> *Id.* at 34.

<sup>7</sup> *Id.* at 30.

<sup>8</sup> *Id.* at 29-30.

<sup>9</sup> Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CALIF. L. REV. 1511, 1519-20, 1586 (1991). Ansley's essay documents her experiences teaching three of her classes. One was a seminar called "Race and Gender in American Law," while the others were a large class on "Discrimination and the Law" and first year Property, where she thoroughly discussed issues of race and its relationship to American society.

<sup>10</sup> *Id.*

<sup>11</sup> In 2012, Abigail Rury, an MSU law student, conducted a survey on how women experienced law school. I recreated that survey to accomplish the same goal for Black women. See Abigail A. Rury, Note, *The Pipeline to the Legal Profession: Perspectives from Michigan State University College of Law*, 2012 MICH. ST. L. REV. 1717, 1719 (2012).

gender and how such intersectionalities have affected Black women law students at MSU Law. It provides some empirical support for the assertion that the negative effects of intersectionality do not begin in law firms and Fortune 500 companies; they begin in law school and follow Black women throughout their careers.

## I. THE LAWYERS

### A. *Passed The Bar: Black Women Lawyers from Past to Present*

Charlotte E. Ray was the first Black woman to become a lawyer.<sup>12</sup> She graduated from Howard Law School in 1872, less than ten years after the end of slavery.<sup>13</sup> It comes as no surprise that Black women lawyers experienced slow entry into the legal profession. In 1970, about one hundred years after Ray's entry, there were 446 Black women lawyers.<sup>14</sup> In 1990, that number increased to 11,006.<sup>15</sup> Comparatively, during that same time period, 1970-1990, the number of white women lawyers increased from 11,664 to 161,004.<sup>16</sup> Thus, in both absolute terms and in relation to white women, Black women have continued to experience slow growth into the legal profession.<sup>17</sup>

Slow growth in the legal profession is just one facet of an immense discourse on how the intersectionality of race and gender has affected Black women professionals. Through the disenfranchisement of Black men, and the systemically disadvantaged economic positions of Black people, Black women never really fit into the private-delicate-sphere generally associated with the women's role. Black women had to work. "She never succumbed to the notion that she was unworthy of being treated the same as white women, and 'neither economic necessity nor tradition . . . instilled in her the spirit of subordination to masculine authority.'"<sup>18</sup>

Yet Black women still experienced the double-bind phenomena<sup>19</sup> associated with gender roles in the legal profession, even in law school. In 1949, Ruth Whitehead Whaley wrote, "[a]s a Negro, she is subject to all the illogical inequalities which inevitably accompany the lack of full integration of Negroes into our American life. . . . More is required of a Negro woman who is a lawyer by her colleagues, the courts and the community."<sup>20</sup> Forty-six years later, in 1995, Mahala A. Dickerson, the first Black woman attorney in Alabama, Alaska, and the City of Indianapolis, and the first Black president of the National Association of Women Lawyers (NAWL) wrote, "[f]emale

<sup>12</sup> Carla D. Pratt, *'Sisters' in Law: Black Women Lawyers' Struggle for Advancement*, 2012 MICH. ST. L. REV. 1777, 1780 (2012).

<sup>13</sup> *Id.*

<sup>14</sup> J. Clay Smith Jr., *Introduction: Law Is No Mystery to Black Women*, in REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 7 (J. Clay Smith Jr., ed., 1998).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> *Double Bind*, GENDER-BIAS LEARNING PROJECT, <http://www.genderbiasbingo.com/double-bind/#.WlVTdbYrK8p> [https://perma.cc/AH9V-DYS3] ("When ambivalent sexism is at work, women who adhere to traditionally feminine roles meet with benevolent approval—but are not seen as go-getters. Women who don't adhere to feminine scripts are respected but seen as having personality problems.")

<sup>20</sup> Ruth Whitehead Whaley, *Women Lawyers Must Balk Both Color and Sex Bias*, in REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS, 49 (J. Clay Smith Jr. ed., 2000).

students were treated with disdain if they were higher achievers and tolerated if they were sweet and mediocre.”<sup>21</sup> Thus, it is clear that Black women lawyers have always faced the epistemic rig associated with gender bias and racial inequality, but even under the societal pressures of Jim Crow and womanhood, Black women of that time still achieved amazing accomplishments.

Although Black women have been present in the legal profession for over a century, their numbers have remained small, and their advancement in the profession stagnant.<sup>22</sup> In 2014, according to the American Bar Association (ABA), there were approximately 1,281,432 licensed lawyers in the United States.<sup>23</sup> In 2005, thirty percent (30%), or 435,687, of licensed lawyers were women.<sup>24</sup> Additionally, about 4.8%, or 61,509, licensed lawyers were Black, or African American.<sup>25</sup> It follows that the number of Black women lawyers falls somewhere within, yet below, both of those numbers.

Unfortunately, “[t]he ABA, the Bureau of Labor Statistics, and the EEOC each collect subsets of data on black lawyers as a group and women lawyers as a group, but none of these sources reported data on the total numbers of black women licensed as a lawyer or actively practicing law in a U.S. jurisdiction.”<sup>26</sup> The problem with not reporting the numbers of double-minority demographical groups, such as Black women, is that no one knows where they stand in regard to representation in the legal community. This knowledge is important because information about demographical representation may shed light on many issues that have recently come to light, such as minority isolation, advancement, and mentorship.<sup>27</sup> In addition, we may better understand how the legal community can better serve its diversified body of clients. One of the reasons that the experiences of minority women lawyers have been such a surprise to the legal community is because researchers have never focused their attention on such small groups.<sup>28</sup> By not asking these questions, we inherently condone the “invisibility” of women of color. Reporting these numbers would be a step in the right direction toward understanding the experiences of Black women attorneys.

The combination of being an attorney of color and a woman is a double negative in the legal marketplace.<sup>29</sup> For Black women, in particular, the struggle to find a balance between professional satisfaction and identity is profound.<sup>30</sup> On the one hand, Black women in professional workplaces find themselves subjected to numerous negative stereotypes often associated with their “Blackness.”<sup>31</sup> On the other hand, there are the career dissatisfactions that are prevalent among

<sup>21</sup> Mahala Ashley Dickerson, *Jet-Propelled into the Law*, in *REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS*, 29 (J. Clay Smith Jr. ed., 2000).

<sup>22</sup> Smith, *supra* note 15, at 7.

<sup>23</sup> *Lawyer Demographics*, AMERICAN BAR ASSOCIATION, [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2014.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2014.authcheckdam.pdf) [<https://perma.cc/FY2P-FFGX>].

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Pratt, *supra* note 13, at 1777, 1781 note 14.

<sup>27</sup> See generally JANET E. GANS EPNER, *ABA COMM’N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* (2006), <http://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility.authcheckdam.pdf> [<https://perma.cc/AGG6-X2SF>] (exploring the experiences of women of color who had worked in a law firm).

<sup>28</sup> See Pratt, *supra* note 13.

<sup>29</sup> See generally GANS EPNER, *supra* note 28.

<sup>30</sup> Pratt, *supra* note 13, at 1789.

<sup>31</sup> Joan C. Williams, *Double Jeopardy? An Empirical Study with Implications for the Debates Over Implicit*

women of color simply from being women.<sup>32</sup> The constant attempt to rectify this specific type of imbalance makes Black women's experiences in the legal profession unique.<sup>33</sup> Still, like many other women of color, Black women have reported experiencing considerable amounts of isolation, lack of meaningful work and mentorship, and the phenomena known as the "black tax" or what Joan C. Williams' recent NSF study called the "Prove-It-Again!" concept.<sup>34</sup> Those concepts can be summarized as follows: when a Black woman does something well, she is overlooked, but when she does something wrong, she faces excessive backlash.<sup>35</sup>

The retention of women of color has been an obstacle that many law firms have faced.<sup>36</sup> A study conducted by the National Association of Law Placement in the 1990s found that more than seventy-five percent of women of color left their law firms within five-years of being hired.<sup>37</sup> Though the opportunity to be mentored and to network may be crucial factors in career success, one of the major barriers to professional advancement about which women of color consistently reported was isolation,<sup>38</sup> often due to exclusion from mentorship and internal networks.<sup>39</sup> Sixty-two percent of women of color reported being excluded from informal and formal networking opportunities.<sup>40</sup> One Black woman said, "one of the things I remember most [about the summer associate program] was how quickly the white men became indoctrinated into the firm, [they] interacted very quickly with the partners and they created bonds not only based on work, but socially and outside of work as well. There really wasn't that opportunity for women in general. It carried over very distinctly into our first-year associate experience . . . ."<sup>41</sup>

Furthermore, the legal profession can be a thankless job for Black women in that they feel as though they have to work twice as hard as men, and other women, in the profession.<sup>42</sup> Many women of color find that they have to repeat themselves to be heard, or constantly prove themselves in order to be considered as competent as their white male colleagues.<sup>43</sup> While white women and Black men have also experienced the "Black Tax" phenomenon, or some form of it, social psychologists have found that Black women are judged more harshly than both groups.<sup>44</sup> When a Black woman does something well, she is overlooked, but when she does something wrong, she faces excessive backlash.<sup>45</sup> "Black associates . . . have one chance and if you mess up that chance,

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*Bias and Intersectionality*, 37 Harv. J.L. & Gender 185, 190-91 (2014); Pratt, *supra* note 13, at 1789.

<sup>32</sup> See generally Gans Epner, *supra* note 28.

<sup>33</sup> Likewise, the struggles that other women of color face with respect to their racial and gendered identities are unique to them because of their significance in history and society.

<sup>34</sup> Williams, *supra* note 32, at 190-91; SOMETHING NEW (Focus Features 2006) (introducing the "Black Tax" concept).

<sup>35</sup> *Id.*

<sup>36</sup> GANS EPNER, *supra* note 28, at xi.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 19.

<sup>39</sup> *Id.* at vii.

<sup>40</sup> *Id.* at 35.

<sup>41</sup> *Id.* at 17.

<sup>42</sup> See generally Williams, *supra* note 32, at 197.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 196.

<sup>45</sup> *Id.* at 195, 197.

look out. There is no room for error,” said one Black woman lawyer.<sup>46</sup> Another way the “Black Tax” manifests itself is in the assumption that a Black woman is only in a position because of an affirmative action or diversity initiative.<sup>47</sup> In this way, a Black woman’s merit and the legitimacy of her position are diminished. Social scientists have called this pattern the “shifting standard.”<sup>48</sup> It happens when society (or peers) perceive that someone does well for a woman or a person of color.<sup>49</sup> Moreover, Black women attorneys have reported being mistaken for court reporters, secretaries, and even clients.<sup>50</sup>

In addition to career dissatisfaction, the societal perception of the professional Black woman has perpetuated stereotypes that are inconsistent with reality. Such a misappropriation of Black womanhood has frustrated her experience in the legal profession. One of the most recognizable stereotypes professional Black women face is the “Angry Black Woman.”<sup>51</sup> Nevertheless, an interesting caveat is that Black women may enjoy more leeway than other women to behave in a more assertive, more dominant way.<sup>52</sup> Some studies have even indicated that Black women who displayed dominance were considered more likable.<sup>53</sup> The danger in exhibiting this dominance happens when Black women display anger. There is a fine line that they must balance in their displays of traditionally male characteristics before they become the “Angry Black Woman.”<sup>54</sup> According to one lawyer, “I am allowed to be passionate, even to demonstrate some level of anger, but it better not be personal. It better not be about me. If I become angry about anything personal, then that is perceived as being an angry black woman.”<sup>55</sup> This expected display of assertion constricts Black women to one mode of behavior. Not all Black women are assertive, or passionate, and to expect such behavior or, more disturbingly, praise it in one woman and scold it in another, diminishes a woman’s ability to show her true identity.

Black women face unique issues in professional satisfaction and self-image, but these issues are far from new, nor are they unique to the law. Black women must also be cognizant that their natural features do not conform to the normative image of the ideal female worker.<sup>56</sup>

Presenting a professional image is very important, particularly in a conservative workplace like the law. Black people tend to have larger features, wider form, and thicker hair that grows upward naturally.<sup>57</sup> Since traditional Black hairstyles are not considered “professional,” Black women find that they have to extensively alter their hair care to satisfy these professional ideals.<sup>58</sup> This is an added burden that is unique to women of afro-centric heritage that not only furthers stereotypes, but hinders her self-image and identity.<sup>59</sup> These phenomena—the “Angry Black

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<sup>46</sup> *Id.* at 197.

<sup>47</sup> *Id.* at 196.

<sup>48</sup> *Id.* at 197.

<sup>49</sup> *Id.*

<sup>50</sup> See J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 405 (1993).

<sup>51</sup> See Pratt, *supra* note 13, at 1786.

<sup>52</sup> Williams, *supra* note 32, at 199.

<sup>53</sup> *Id.* at 200-201.

<sup>54</sup> *Id.* at 202.

<sup>55</sup> *Id.*

<sup>56</sup> Pratt, *supra* note 13, at 1782.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 1782-83.

<sup>59</sup> See *id.*

Woman” and the lack of a normative professional image—are examples of what makes Black women’s experiences particularly challenging in professional settings. These unique issues faced by Black women—which follow them throughout their careers—start in law school.

*B. Behind The Bar: Black Women Law Students*

For the same reasons that it is important to record the number of Black women who are barred, it is equally important to consider the potential impact that low numbers may have on Black women who are still in law school. The number of Black women, or any demographic, at a law school can have an affect on her experience at that place. The number of Black women at a school can be the difference between feeling isolated and tokenized or being comfortable and represented.

According to the Law School Admissions Council (LSAC), there were approximately 45,700 students admitted to law school in 2013 (a 9.8% drop from the previous year).<sup>60</sup> Furthermore, there were approximately 2,649 Black women—full time and part-time—enrolled in the top one hundred law schools in the United States in the 2013-2014 school year.<sup>61</sup> Howard Law School, the most nationally recognized historically black college or university law school, added another 213 to that number of Black women law students.<sup>62</sup>

Georgetown University Law Center had the highest number of Black women enrolled full-time and part-time at ninety-nine (99).<sup>63</sup> However, the University of Georgia School of Law had the highest number of Black women enrolled relative to its student body population, at 18.7%.<sup>64</sup> The University of Oregon School of Law had the lowest number of Black women enrolled, and the lowest percentage with respect to the student body at one, and 0.4% respectively.<sup>65</sup>

There has been little study of the effects of intersectionality in professional schools. One can imagine, however, that just as intersectionality has affected women in the legal profession, it has affected women “behind the bar.” Studies have found that a woman’s experience in law school is very different from a man’s, and women are affected in negative ways.<sup>66</sup> As Lani Guinier and others [have] demonstrated, law schools are in some ways the embodiment of inhospitable, traditional, and rigid institutions. These institutions feature many forms of subtle, structural, discrimination, which systemically discourages women law students from class participation, active engagement with law school life, effective performance, and success.<sup>67</sup>

<sup>60</sup> End of Year Summary 2003-Present (ABA applicants-applications-admissions-matriculants-enrollment-tests-CACS), LSAC.ORG (2016), <http://www.lsac.org/lisacresources/data/lisac-volume-summary> [<https://perma.cc/PW45-WYUT>] (last visited Oct. 17, 2016).

<sup>61</sup> LSAC Official Guide to ABA-Approved Law Schools, LSAC.ORG (2016), [https://officialguide.lsac.org/release/OfficialGuide\\_Default.aspx](https://officialguide.lsac.org/release/OfficialGuide_Default.aspx) [<https://perma.cc/SM3A-Y5QQ>] (last visited November 10, 2016) (I compiled a list of the numbers and percentages of all the Black women law students enrolled at each of the top one hundred law schools and added them together).

<sup>62</sup> *Id.*

<sup>63</sup> Official ABA Data, Georgetown University, LSAC.ORG (2016), [www.lsac.org/docs/default-source/official-guide-2014/aba5244.pdf](http://www.lsac.org/docs/default-source/official-guide-2014/aba5244.pdf) [<https://perma.cc/ZL96-YGXH>].

<sup>64</sup> Official ABA Data, University of Georgia School of Law, LSAC.ORG (2016), <http://www.lsac.org/docs/default-source/official-guide-2013/aba5813.pdf> [<https://perma.cc/YXH9-CTLD>].

<sup>65</sup> Official ABA Data, University of Oregon School of Law, LSAC.ORG (2016), <http://www.lsac.org/docs/default-source/official-guide-2013/aba4846.pdf> [<https://perma.cc/YD22-BGHG>].

<sup>66</sup> See Rury, *supra* note 12, at 1719; Wald, *supra* note 6, at 30.

<sup>67</sup> Wald, *supra* note 6, at 30.

These studies have reported that, while most women have positive experiences with law school and do not inherently feel discrimination, there is a sense of isolation, lack of developing mentorship relationships, and a lack of confidence about law school.<sup>68</sup> Such findings paint a bleak picture for women law students, and the discourse for the experiences of Black students is even more deplorable.

Most scholarly articles on Black law students discuss affirmative action, equality, or the “rhetoric of race.” But, the few articles that do focus on the experiences of Black law students tell a disturbing story. Both women and minorities have reported that their limited numbers create negative presumptions about their intellectual abilities: they are tokenized as “affirmative action babies.”<sup>69</sup> Some students have even reported their law school as having a racially hostile environment.<sup>70</sup> Today, such environments are typically characterized by “an aggregation of day-to-day actions that subtly denigrate the accomplishments and capacities of people along racial/ethnic lines.”<sup>71</sup> These interactions often result from a general lack of knowledge and experience by the majority student body with students of other races, and the effects they have had on Black law students are alarming.

The idea that Black women law students experience both the hostilities of race, and the alienation of gender is a difficult one to sit with.<sup>72</sup> But the reality is that Black women law students consistently face the “double-binds” associated with gender, and the stereotypes associated with race. In order to discover how these actually manifest themselves in the law school setting, there needs to be a conversation about those experiences. Discussing race and gender together is just the beginning of the discourse on the effects of intersectionality. It is a starting point that will lead to better insights on the experiences of others at many levels, and help us understand each other and grow as a society.

## II. THE SURVEY

This survey is based on the experiences of Black women law students at Michigan State University College of Law (MSU Law). MSU Law is a private, independent law college founded in 1891 as Detroit College of Law (DCL).<sup>73</sup> It is the oldest independent law school in the nation, and one of the only independent law schools to be affiliated with a major research university.<sup>74</sup> MSU Law vowed to admit students regardless of race, sex, or citizenship.<sup>75</sup> From its inception, DCL graduated most of the early Black women lawyers, including the first Black woman admitted to practice in the State of Michigan, Grace G. Costavas-Murphy—who was admitted to practice in 1923.<sup>76</sup> MSU Law has continued to strive toward their commitment to diversity by graduating

<sup>68</sup> See Rury, *supra* note 12; Wald, *supra* note 6, at 32.

<sup>69</sup> Darlene C. Goring, *Silent Beneficiaries: Affirmative Action and Gender in Law School Academic Support Programs*, 84 K.Y.L.J. 941, 945 (1996).

<sup>70</sup> See generally Kendra Fox-Davis, Note, *A Badge of Inferiority: One Law Student's Story of a Racially Hostile Educational Environment*, 23 NAT'L BLACK L.J. 98 (2010).

<sup>71</sup> *Id.* at 102.

<sup>72</sup> *Id.*; Wald, *supra* note 6; see Rury, *supra* note 12.

<sup>73</sup> See Rury, *supra* note 12, at 1720.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> See SMITH, JR., *supra* note 51, at 470.



increasing numbers of women and minority graduates.<sup>77</sup> However, due to the decrease in the number of Black women applying to law school, as well as a myriad of other factors, Black women law student numbers are still relatively low.

According to the MSU Law Spring Enrollment Summary for 2015, there are eight hundred and fifteen (815) full-time and part-time students enrolled at MSU College of Law.<sup>78</sup> Currently, there are three hundred and seventy-one (371) women law students enrolled and women make up 45.5% of the student body.<sup>79</sup> There are approximately twenty-six (26) full-time Black women law students, and they are the women I surveyed, along with three recent graduates.<sup>80</sup>

This survey was conducted during the second semester of my second year of law school in the Spring of 2015. While law school can be a difficult time for any student, I had begun to notice small things such as comments that students or professors made and the lack of knowledge about Black people and women held by non-minorities and men. These things ranged from outright offensive to ignorant marginalization. Aside from being a very obvious one of five Black women in a section of seventy-five students during my first year, I noticed that there was very little discussion of race and gender issues when these discussions would have been appropriate for class. When the percentages of certain groups of students are so low, isolation may manifest in the fact that very few people relate to your experience or even seek to understand it.<sup>81</sup> The problems arise, however, when that experience is discounted as untrue, accused of being exaggerated, and most often, outright ignored. After discussing my experiences with fellow Black women law students, I had begun to notice that many of us were experiencing some of the same things, so—taking a page from Abigail Rury—I decided to conduct a survey.

The survey was designed to explore the effects of the intersectionality of race and gender, and how such intersectionalities have affected Black women law students at MSU Law. Further, I also sought to answer a few questions about how those effects manifested in the law school teaching model, and the law school environment as a whole. This survey was conducted to answer three major questions: (1) whether the canon method can adequately include women and minority experiences in the law school structure;<sup>82</sup> (2) whether the negative effects of race and gender intersectionality can be identified as early in a Black woman's legal career as law school; and (3) whether law school can have an effect on the way Black women experience the legal profession once they graduate. I expected the results of the survey to parallel many of the experiences reported by Black women in studies like "Visible Invisibility."<sup>83</sup>

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<sup>77</sup> See Rury, *supra* note 12, at 1721.

<sup>78</sup> Memorandum, MSU Law Spring Enrollment Summary of Degree Programs, from the Office of Student Engagement to Student Body, (Mar. 2015), (on file with Michigan State University College of Law Library) [hereinafter MSU Law Summary].

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* (I added the reported numbers of full-time law students from the 1L-3L class years).

<sup>81</sup> For a related discussion about the occurrence of this phenomenon at law firms, see GANS EPNER, *supra* note 28 at 19 ("It is likely that the marginalization and isolation described by women of color would decrease if they had a stronger presence.")

<sup>82</sup> See generally Ansley, *supra* note 10 (concluding that a curriculum that explicitly recognizes race is "an indispensable part of minimal cultural literacy for American lawyers and legal scholars").

<sup>83</sup> See GANS EPNER, *supra* note 28.

Since I was acquainted with several of the Black women students, I asked if they would be interested in participating in this survey. I also reached out to a few recent law graduates to increase the response rate. I created the survey using an online database. Participation was voluntary and responses were anonymous.

#### A. Response Rates

Of the twenty-six Black women law students, seventeen replied, (including those who had graduated)—thus, the participation rate was 65 percent.<sup>84</sup> In part to facilitate the survey's anonymity, I did not ask about class year. I was, therefore, unable to know how many students were divided amongst each class. The survey consisted of three sets of questions—or, twenty questions total—designed to probe the experiences of Black women law students.

The first set of questions were intended to explore the kinds of experiences that Black women at MSU College of Law could expect to have once they entered the various practice areas they intended to join. By comparing their answers to those that Black women attorneys presently in the legal profession have given in other intersectionality studies, we could inform students on what they should expect and prepare for. The next set of questions discussed Black women's experiences with racial and gender biases at the law school. This articulation of a Black woman's time at the law school will inform the legal community about how students actually experience intersectionality in an academic setting.<sup>85</sup> Furthermore, these questions were intended to shed light on the subtle, often implicit, ways in which these women experienced double-binds in the law school environment. The third set of questions were intended to make a determination on the law school's role, or lack thereof, in facilitating the inclusion, or perhaps, the isolation of minorities and women. These questions were designed to identify areas of legal education that lack discussion of ethics and gender issues, where such discussion could potentially provide an understanding of intersectionality in academia.

#### B. Potential Career Paths

I asked Black women law students about their potential career paths—where they planned to work and what types of practice areas in which they planned to work—in order to identify those areas where they could potentially be subject to the most discrimination. Additionally, answers to these questions might aide Black women in understanding the various kinds of experiences they could expect to have once they graduated law school and entered the legal profession. Questions such as these are important to know so that Black women can go into the profession understanding the kinds of discrimination, if any, they may be subjected to. Using the information provided in this research, and other research done on minority experiences in the legal profession, Black women can make informed decisions about their futures as lawyers.

One can assume that the areas that Black women choose to live in, and the kinds of careers

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<sup>84</sup> Janee T. Prince, *The Experiences of Black Women Law Students* (unpublished survey) (on file with the author) [hereinafter BWLS Survey].

<sup>85</sup> See generally Wald, *supra* note 6 (similarly exploring the interplay of gender identity and racial identity to help explain the persistent findings of alienation, isolation, and silencing of women law students); see Ansley, *supra* note 10 at 1585 (incorporating discussions of race into legal education “will come by establishing a steady pattern of repeated effort and openness and by engaging in interactions that cumulatively help you begin to cure the ignorance that teachers and students alike almost certainly bring to a race-conscious educational setting”).

they choose to have could potentially have an enormous impact on their experiences in the legal profession. Forty-one percent, (41.2%, seven out of seventeen), of the survey respondents reported that they wanted to practice in big cities such as New York.<sup>86</sup> Another forty-one percent reported that they expected to work in an urban city.<sup>87</sup> Two women reported that they expected to work in a rural area or small city.<sup>88</sup> Only one respondent reported that she expected to work internationally.<sup>89</sup> Approximately fifty-three percent (nine out of seventeen) of survey respondents expected to work in law firms, two expected to work as in-house counsel, two expected to work in public interest or non-profit, and two expected to work in government.<sup>90</sup> Only one student planned to pursue a career outside of the law.<sup>91</sup>

Again, the areas that Black women choose to live and the kinds of careers they can expect to have in those areas will have an enormous impact on their experiences in the legal profession.<sup>92</sup> For example, a Black woman who works in a big city like New York is more likely to be surrounded by other women of color, and other Black women. On the other hand, if a Black woman chooses to work in a small firm in a rural area, she would be far less likely to find peers who share her background and experiences. A small firm is also less likely to provide many minority encounters for non-minorities. In these instances tokenism, isolation, and prejudice may be prevalent. Herein lies the importance of seeing others who look like you, and share your common background, and the importance of collecting data on smaller demographical groups. As explained by women attorneys in the studies mentioned above, the ability to connect with mentors and other people of color has many benefits, not only for career prospects, but also on wellness. There is comfort in not having to constantly explain and justify your experiences to others. Seeing women of color in positions of power may empower other women of color to aspire to those positions—it makes those aspirations seem less daunting.<sup>93</sup> In addition, knowing how many people of color there are in a given area allows employers, as well as job searchers, to make informed decisions about increasing diversity.

### C. *Networking: The Value of Human Capital*

In regard to the networking and mentoring questions, the respondents' answers highlighted the importance of these factors to their careers. It was well understood by these women that in order to build success, mentoring and networking were crucial. One hundred percent of the survey respondents cited networking as one of the most important factors for advancing one's career, followed by mentorship (53%), and grades (35%).<sup>94</sup> I then asked students about their acquaintances with lawyers at different stages in their legal careers. For Black women in particular, Black women lawyers need to be visible in the profession.<sup>95</sup> The lack of diversity in positions of power purports

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<sup>86</sup> BWLS Survey, *supra* note 85.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> See generally GANS EPNER, *supra* note 28.

<sup>93</sup> Pratt, *supra* note 13, at 1781.

<sup>94</sup> BWLS Survey, *supra* note 85.

<sup>95</sup> Pratt, *supra* note 13, at 1781.

the notion amongst people of color that such positions were not created for them and thus cannot be held by anyone other than white males. Moreover, other Black women attorneys have had the requisite experience with intersectionality and are well equipped to guide new Black women attorneys on navigating those experiences to reach success in spite of these issues.

Overall, mentors make navigating the legal field a lot easier.<sup>96</sup> It should be noted however, that even though the law school assigns professors as “faculty mentors,” no survey respondent reported that a law school professor was his or her mentor.<sup>97</sup> Thus, twelve-out-of-sixteen students reported that they had a mentor not appointed by the law school.<sup>98</sup> About seventy-seven percent (76.9%) of students reported that this mentor was situated in the legal profession.<sup>99</sup>

These findings correlate with Abigail Rury’s 2012 study, which found that men and women at MSU Law were not developing mentorship relationships with professors.<sup>100</sup> At the time of Rury’s study, sixty-one percent (61%) of women respondents did not have faculty mentors.<sup>101</sup> Thus, both studies have indicated that students are not developing the kinds of mentorships with faculty at MSU Law despite their understanding of the importance of mentorships.

Equally important, only half of the survey respondents reported that prior to coming to law school, they had access to a lawyer if they needed one.<sup>102</sup> Many of these students did not have access to a lawyer growing up, much less have the confidence to approach one for career guidance. And lastly, about fifty-three percent (52.9%, nine-out-of-seventeen) of black women respondents reported that they expected that their race or ethnicity, or both, would be the most likely reason for discrimination while seeking employment after law school.<sup>103</sup> This was followed by socioeconomic status (three-out-of-seventeen) and gender (two-out-of-seventeen).<sup>104</sup> One woman noted her sexual orientation as the reason, and two women responded “none of the above,” indicating that they did not believe that they would be discriminated against in the legal profession at all.<sup>105</sup>

The results of the survey indicated that most black women law students expected to work in cities at law firms.<sup>106</sup> Fortunately, they understood what others have already pointed out: that mentorship and networking would be key factors in advancing their careers.<sup>107</sup> “Networks and contacts, aspects of social capital, will play a significant part in helping one find a job, especially for students attending non-elite law schools, and a significant body of literature documents the impact of cultural capital on one’s chances of making partner at large law firms.”<sup>108</sup> In light of these results, black women should expect that at these law firms, it will be difficult to be promoted into

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<sup>96</sup> See GANS EPNER, *supra* note 28, at 13 (explaining that law firms have acknowledged “that mentoring is an important aspect of attorney development and have implemented formal mentoring programs” as a result).

<sup>97</sup> BWLS Survey, *supra* note 85.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> See Rury, *supra* note 12.

<sup>101</sup> *Id.* at 1728.

<sup>102</sup> BWLS Survey, *supra* note 85.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*; GANS EPNER, *supra* note 28, at 13, 17, 19.

<sup>108</sup> Wald, *supra* note 3, at 1097.

positions of power and that their chances of staying at these firms are low.<sup>109</sup>

As of 2014, women of color make up 6.74% of total lawyers, 11.51% of associates, and 2.45% of partners. These numbers for Black women attorneys, if reported, would be much lower.<sup>110</sup> The numbers for minority women lawyers are low for many reasons. As discussed above, the majority of minority women leave law firms within five years.<sup>111</sup> Aside from not feeling valued, women of color leave law firms because they do not feel supported (twenty-two percent 22%), and they lack the ability to establish meaningful relationships (twenty-one percent 21%).<sup>112</sup> Thus, student respondents were correct in assuming that their various statuses in life will affect their experience in the legal profession and having mentors will aide in dealing with the downsides of those effects. A Black woman's ability to form a mentorship with more experienced lawyers in the profession will be critical to her success.<sup>113</sup> Some respondents were ahead by knowing lawyers prior to coming to law school. It provided them with opportunities during law school, which will provide them with opportunities after school. Most MSU Law Black women, however, did not have access to lawyers prior to coming to law school, and for some, it was difficult developing mentorships while here. It is likely that these women will have trouble early in their careers.<sup>114</sup>

#### D. Indicators of Racial and Gender Bias

Due to Black women's unique history in American society, there are certain societal views and pressures specific to her.<sup>115</sup> The following questions were intended to begin a narrative about a Black woman's experience in law school. Furthermore, the answers to these questions will illustrate a parallel to what Black women in the legal profession have also experienced.

When asked, "[d]o you ever experience microaggressions in law school?," eighty-eight percent (87.5%) of survey respondents said "yes."<sup>116</sup> Microaggressions are everyday, verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership.<sup>117</sup> Some people may believe that these comments are harmless, yet they are highly offensive, especially when they come from professors and students. One student reported that she has experienced,

<sup>109</sup> See GANS EPNER, *supra* note 28, at 36 (finding that 20% of women of color were denied promotion opportunities compared to the 1% of white men and that retention rate for women of color in law firms was 53% compared to the retention rate of white men at 72%).

<sup>110</sup> *Diversity Numbers at Law Firms Eke Out Small Gains—Numbers For Women Associates Edge Up After Four Years of Decline*, NAT'L ASS'N FOR LAW PLACEMENT (Feb. 17, 2015), [http://www.nalp.org/lawfirmdiversity\\_feb2015](http://www.nalp.org/lawfirmdiversity_feb2015) [<https://perma.cc/S4VL-NQFZ>].

<sup>111</sup> Gans Epner, *supra* note 28, at xi.

<sup>112</sup> ABA COMM'N ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN FORTUNE 500 LEGAL DEPARTMENTS* (2012), at viii, [http://www.americanbar.org/content/dam/aba/marketing/women/visible\\_invisibility\\_fortune500\\_executive\\_summary.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/visible_invisibility_fortune500_executive_summary.authcheckdam.pdf) [<https://perma.cc/JKE8-VCR2>].

<sup>113</sup> See GANS EPNER, *supra* note 28, at 12-13; see also Pratt, *supra* note 13, at 1789.

<sup>114</sup> GANS EPNER, *supra* note 28, at 12 (describing lack of mentoring as a "serious career hurdle").

<sup>115</sup> Pratt, *supra* note 13, at 1779.

<sup>116</sup> BWLS Survey, *supra* note 85.

<sup>117</sup> Derald Wing Sue, *Microaggressions: More Than Just Race*, PSYCHOLOGY TODAY (Nov. 17, 2010), <https://www.psychologytoday.com/blog/microaggressions-in-everyday-life/201011/microaggressions-more-just-race> [<https://perma.cc/NQ54-AF3L>].

Ignorant comments about race, offensive remarks about women with large lips, emphatic compliments when my hair is straightened, remarks about Black people always committing crimes, comments about how preppy and educated white men are unlikely to commit rape, etc. . . . These are generally made in casual conversations as though they are neutral and inoffensive.<sup>118</sup>

Many of these kinds of remarks are made without regard to those around them,<sup>119</sup> and the speaker does not usually understand the experiences of the people they are asserting “knowledge” over. Even still, people of color are criticized as sensitive when they express their disapproval of these slights. Another student wrote:

[There have been] too many to remember! Comments like “I was so glad to get out of the hood,” by a white male classmate. “Maybe you didn’t learn this, like, if you went to public school or something,” by a professor . . . A professor spending a significant amount of time talking about middle and upper class child support calculations, and then referencing a footnote for low-income child support calculation and enforcement. “Pow wow” said by faculty and students. “He was a homie,” by a professor in reference to a Black man, an assertion by a white male student that referring to the marginalization of indigenous youth in schools as “academic violence” was overdramatic. White women asking to touch my hair. It never ends.<sup>120</sup>

Nearly all of the survey respondents reported some comment about Black women’s hair and lips.<sup>121</sup> For example, another student wrote: “[P]eople talk about my hair, or how ‘easy’ it is to get money being a minority, or special access to resources.”<sup>122</sup> These types of comments invalidate Black women’s hard work and perseverance by perpetuating a stereotype that is untrue, and non-definitive.<sup>123</sup> It is a testament to Black women that they continue to have success in the legal profession despite being disproportionately subjected to these stereotypes.

Furthermore, when asked how often Black women survey respondents experienced microaggressions, about forty-four percent (43.8%) reported hearing them often, and thirty-one percent reported (31%) hearing them sometimes.<sup>124</sup> Two women reported “not hearing them often,” and one respondent said, “not at all.”<sup>125</sup>

Finally, thirteen out of seventeen survey respondents responded with “yes” when asked if they felt that they had to work harder than their peers who were not Black women.<sup>126</sup> Four respondents responded, “about the same,” indicating that they felt that they had to work at the same

<sup>118</sup> BWLS Survey, *supra* note 85, Respondent No. 8, (April 15, 2015 at 12:00p.m.) (on file with author).

<sup>119</sup> Cf. Sue, *supra* note 118. Dr. Sue does not explicitly assert that microaggressions are the user’s way of “asserting knowledge” over others, rather, he attributes the cause of microaggressions to misplaced world views.

<sup>120</sup> BWLS Survey, *supra* note 85, Respondent No. 6 (April 02, 2015 at 5:38p.m.)

<sup>121</sup> BWLS Survey, *supra* note 85.

<sup>122</sup> BWLS Survey, *supra* note 85, Respondent No. 10 (April 06, 2015 at 1:11a.m.)

<sup>123</sup> Pratt, *supra* note 13, at 1785; *see generally* Williams, *supra* note 32.

<sup>124</sup> BWLS Survey, *supra* note 85.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

level as their non-Black peers.<sup>127</sup> It is safe to say that the Black woman law student's narrative may include an environment where she is few in number and is consistently exposed to microaggressions concerning her race, gender, and socioeconomic status. Such an experience may, without doubt, cause Black women to feel isolated.

As the student responses indicate, many of the microaggressions concern more than one minority experience. Yet a Black woman's more defined features—such as hair—become something of interest to people of other races.<sup>128</sup> She is most likely the only woman of any race whose features have this effect on others. In professional schools such as law school, this counteracts the attempt to maintain a professional image,<sup>129</sup> not to mention the pressure that Black women feel to be positive representations of their race and gender.<sup>130</sup>

There is a tendency for people to hold underlying assumptions that a Black person's position in a place results from government assistance or minority initiatives, as opposed to what is most often the cause: merit.<sup>131</sup> Moreover, studies have shown that Black people are not the largest beneficiaries of affirmative action programs.<sup>132</sup> Because of the intersection of all of the minority identities that Black women maintain to varying degrees, most Black women felt that they have had to work harder than other women to overcome the burdens of these social labels.<sup>133</sup> She has to change her appearance to maintain a professional image.<sup>134</sup> She must consistently reaffirm her educational merit to overcome the stigma of being associated with diversity initiatives.<sup>135</sup> She must be a beacon for those that follow and an image of success for those who have come before her. And she must do this in an environment where her slights are invisible.

#### E. Law Schools

“Diversity should not be measured simply in terms of law school enrollment or representation in the bar, but rather in meaningful and equal participation in the legal profession.”<sup>136</sup> Members of the law school community are in a better position than anyone else, as observers and interpreters of law, to enter the discourse concerning the relationship of race and gender in the profession. Thus, law schools should be at the forefront of furthering the conversation on intersectionality.

The last series of questions were intended to use MSU Law as a backdrop to explore how Black women experience law school and to assess what diversity measures law schools employ to facilitate inclusion. Further, the questions were intended to find out which social issues are

<sup>127</sup> *Id.*

<sup>128</sup> *See Pratt, supra note 13, at 1784.*

<sup>129</sup> *Id.*

<sup>130</sup> BWLS Survey, *supra* note 85, Respondent No. 13 (April 08, 2015 at 11:37a.m.).

<sup>131</sup> *See Goring, supra note 70.*

<sup>132</sup> Chloe Angyal, *Affirmative Action is Great for White Women. So Why Do They Hate It?*, HUFFINGTON POST, Jan. 21, 2016, available at [http://www.huffingtonpost.com/entry/affirmative-action-white-women\\_us\\_56a0ef6ae4b0d8cc1098d3a5](http://www.huffingtonpost.com/entry/affirmative-action-white-women_us_56a0ef6ae4b0d8cc1098d3a5) [https://perma.cc/73M7-F6Z9].

<sup>133</sup> *See Pratt, supra note 13; see also Williams, supra note 32* (describing how women feel the need to constantly prove themselves when compared to their male counterparts).

<sup>134</sup> *See Pratt, supra note 13.*

<sup>135</sup> *See Goring, supra note 70.*

<sup>136</sup> Wald, *supra* note 3, at 1106.

appropriate for law school—and if we should devote discussion to them.

As discussed above, the majority of Black women law students at MSU Law reported experiencing microaggressions.<sup>137</sup> Therefore, I asked survey respondents if they believed law school was a “safe space” to discuss ideas.<sup>138</sup> Students chose from responses that ranged from “strongly agree” to “strongly disagree.”<sup>139</sup> Fifty percent of survey respondents (50%) responded with “neutral,” indicating they believed the environment was balanced.<sup>140</sup> Four respondents selected that they “disagreed.” In other words, for them law school was not a safe space to discuss ideas.<sup>141</sup> One survey respondent cited that she “agreed” with the proposition that law school was a safe space.<sup>142</sup> Whether these students believe that law school is a “safe space” can determine how comfortable they will be in expressing their views and participating in class.

Next, I asked if students felt that the professors adequately discussed topics concerning gender, race, and ethnicity when they came up in class.<sup>143</sup> Forty-seven percent (47%) of students said that issues of race and gender were rarely discussed.<sup>144</sup> Thirty-five percent (35%) reported little discussion.<sup>145</sup> Two students reported that these issues were discussed sometimes.<sup>146</sup> None of the students reported that professors “always” discussed race and gender issues when they came up in class discussion.<sup>147</sup>

When asked to elaborate on specific instances where there could have been discussion, the students expressed disappointment with the missed opportunities and lack of diversity in the faculty.<sup>148</sup> One woman said:

There are so many missed opportunities to discuss race, ethnicity, or gender here! The Trial Practice Institute Program, in particular, (and maybe other clinical programs), [would really] benefit from [having] more diversity in our adjunct instructors. I think both minority and [non-minority] students would benefit from being exposed to intelligent, competent, professionals [who] are also diverse.<sup>149</sup>

Having a more diverse adjunct faculty supports diversity goals in that these faculty members would be more relatable mentors for minority students and positive illustrations of successful people of color. In this author’s opinion, despite being good teachers, non-minority professors lack the incentive and the personal knowledge that would be beneficial in educating students on diversity. The idea being that an individual having experienced racism, sexism, or both, a diverse professor would be better situated to explain that experience.

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<sup>137</sup> BWLS Survey, *supra* note 85.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*, Respondent No. 8 (April 2, 2015 at 11:23p.m.).



Another student wrote:

After Trayvon Martin died nothing (emphasis added) was said in any of my classes. [It was the] same [with] Eric Garner, Mike Brown, and the subsequent non-indictment. Nothing. Not a word. How are we supposed to be conscious practitioners when such obvious injustices are not discussed.<sup>150</sup>

Many students indicated that these topics, regardless of their relation to the particular course, never arose in their classrooms discussions. “[I]t just never comes up. . . . We always discuss surrounding events and how things got the way they are, but never social issues.”<sup>151</sup> Because law school is a place where social issues should readily be discussed, legal courses should allow room for discussion on the social issues that create the legal questions in cases that are assigned to students:

In Property [class], when discussing covenants that prohibited Blacks and Jews from buying homes in certain neighborhoods, the racial inequality was a brief one sentence gloss over. However, in Contracts [class], the professor did a great job discussing the historical inequalities within unconscionable contracts [in] low income African American communities in the 1960s.<sup>152</sup>

In some ways, law schools have attempted to rectify the lack of attention to societal issues in substantive classes by offering seminar courses dedicated solely to meaningful social issues. While those classes are great, a majority of the students who take those courses usually have a vested interest in the issues discussed in the course:

Aside from a few great courses designed to discuss women’s issues, or the inequalities in capital punishment, I have only had two professors who have attempted to discuss race or gender charged issues in class. In one instance, it was the first year Lawyers and Ethics class [but], there were very few non-Black students, (as in about two), who were willing to [participate] in addressing basic questions about civil disobedience.<sup>153</sup>

There may not always be instances when professors have the opportunity to adequately discuss race or gender issues in the substantive courses. However, there are a number of real world events that may be appropriate for classroom discussion. As discussed above, one student expressed disappointment in the lack of discussion on Trayvon Martin, Mike Brown, and Eric Garner.<sup>154</sup> This type of issue fits perfectly within the realm of criminal procedure, criminal law, or constitutional

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<sup>150</sup> *Id.*, Respondent No. 7 (April 6, 2015 at 1:09p.m.).

<sup>151</sup> *Id.*, Respondent No. 11 (April 6, 2015 at 1:09a.m.).

<sup>152</sup> *Id.*, Respondent No. 16 (April 11, 2015 at 10:06a.m.).

<sup>153</sup> *Id.*, Respondent No. 14, (April 10, 2015 at 1:30p.m.).

<sup>154</sup> *Id.*, Respondent No. 7 (April 6, 2015 at 1:09p.m.).

law—therefore, it should have been discussed in those classrooms.

I also asked survey respondents how often they volunteered to provide their opinions on race and gender issues when they were discussed in class. The answer choices ranged from rarely to always.<sup>155</sup> Seven out of seventeen students responded that they rarely volunteered.<sup>156</sup> Three students said “not often,” and three more reported being “in the middle,”—indicating that they volunteered sometimes.<sup>157</sup> Four students reported that they did so either “often” or “always.”<sup>158</sup>

Understanding whether Black women law students are actively, passively, or never contributing to class discussion is important if law schools want to reach the “critical mass” of meaningful diversity discussed in *Grutter v. Bollinger*, a landmark Supreme Court case that addresses law schools’ affirmative action policies.<sup>159</sup> Justice O’Connor famously wrote that the point of the University of Michigan’s affirmative action plan was “to achieve that diversity which has the potential to enrich everyone’s education and thus make a law school class stronger than the sum of its parts.”<sup>160</sup> She continued, “[b]y enrolling a ‘critical mass’ of [underrepresented] minority students, ‘the Law School’ seeks to ensure their ability to make unique contributions to the character of the Law School.”<sup>161</sup>

In striving toward this end, the importance of a group of people sharing their narrative cannot be minimized. After all, who would be better suited to share the experiences of Black women than Black women themselves? The follow up question asked whether Black women law students felt compelled to participate in class discussion when race and gender issues did, in fact, come up. 64.7% said “no”—they did not feel compelled to participate, and 35.3% said “yes.”<sup>162</sup> When asked to elaborate, many of the students who had answered negatively echoed sentiments of “not being the representatives for their race or gender.” Conversely, the women who responded “yes,” felt a sense of obligation to share their experiences. One student wrote:

I certainly do not speak for my entire race, however, I feel it necessary, at times, to voice my perspective—to give some people realistic insight. I was taught, at a young age, that if you do not speak up, someone else will speak up for you. And I think too much of my education has been filled with others speaking for me. Alternatively, sometimes I feel exasperated with circular discussions on race, ethnicity, or gender, and do not always want to speak.<sup>163</sup>

Because the percentage of Black women law students in each law school section is so low, some students reported that they ended up feeling as though their views were the “Black voice,” or the “woman’s voice,” in the classroom.

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<sup>155</sup> BWLS Survey, *supra* note 85.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Grutter v. Bollinger*, 539 U.S. 306, 316 (2003).

<sup>160</sup> *Id.* at 315.

<sup>161</sup> *Id.* at 316.

<sup>162</sup> BWLS Survey, *supra* note 85.

<sup>163</sup> BWLS Survey, *supra* note 85, Respondent No. 8 (April 02, 2015 at 11:23a.m.).

I used to feel [that I had to raise my hand] but now it feels so exhausting [trying to explain] to people that racism and sexism still exists. It's so obvious to me and [it is] frustrating when people either don't see it, or assert that our society isn't plagued with these injustices.<sup>164</sup>

While Black women law students are specially situated to inform others about their experiences in law school, it is important to understand that no one narrative should be hailed as every Black woman law student's experience. Furthermore, these students were aware that "Black woman" is not the only identity that Black women maintain, and recognizing other identities that intersect in women's lives is important.

The next set of questions in the survey refocused on career development in order to explore the ways in which the law school's resources helped Black women law students, if at all. I asked students whether they were involved in the Wolverine Bar Association, or some other diversity legal association. Seventy-five percent (75%) of students said "yes."<sup>165</sup> About half of the women who had reported "yes" also reported that they had received internships and jobs through those organizations.<sup>166</sup> These women had also been offered summer associate positions or have gained mentors. The internships they had received were located in the top law firms, and corporations in Detroit, Lansing, and other large cities in the Midwest. One might have heard about these organizations through their advisors, but they were hardly ever advertised around the law school. Most students found out about the program through organizations like the Black Law Student's Association (BLSA). Ironically, the law school usually requests that these students return to recruit at MSU Law. The point is that Black women law students had been finding and creating opportunities outside of the resources provided by their law school because much of their experiences involved exclusion.

Law school places Black women in an interesting juxtaposition. They are immersed in topics that have affected them throughout history and have had drastic impacts on their current positions, but those topics are discussed so peripherally as to diminish the importance of the narrative. The survey respondents' answers overwhelmingly show that this narrative remains drastically untold. Considering that there are students who do not believe that law school is a safe space to discuss race and gender, and the lack of initiated class discussion on the part of the professors, it is likely that this narrative will remain silenced.

The fact remains that Black women law students experience, at varying degrees, many of the same institutionalized pressures that most law students face—dissatisfaction with law school or difficulty building and maintaining mentorship relationships. But, there is an added component: Black women in law school have to work harder than others to be taken seriously, and they face implicit biases that restrict their identity.<sup>167</sup> Researchers have been hypothesizing why minority numbers in the legal profession are so low, and asking how the experiences of women of color in large law firms have gone unnoticed for so long, when we should be asking whether these experiences happen before minority women enter the profession, and how we can change them.

Considering the results of this survey, it is clear that Black women have a unique law school experience. Nevertheless, I would have been remiss had I not challenged Black women to be the arbiters of their own law school existence. Therefore, I asked Black women what they were

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<sup>164</sup> *Id.*, Respondent No. 7 (April 02, 2015 at 5:30p.m.).

<sup>165</sup> BWLS Survey, *supra* note 85.

<sup>166</sup> *Id.*

<sup>167</sup> BWLS Survey, *supra* note 85; Williams, *supra* note 32, at 195.

doing to diversify their own law school experience. For the final question, I asked the women to describe the race and gender of their main group of friends.<sup>168</sup> I defined “group of friends” as the people with whom students spent more than twenty-five percent of their free time.<sup>169</sup> The categories, from which they could select multiple answers, included: all Black people, all Black women, at least one person who is non-black, at least one white woman, and at least one white man.<sup>170</sup> Twelve women said that they spent most of their free time with at least one person who is non-black.<sup>171</sup> Six of the respondents said their group consisted of at least one person who was non-black.<sup>172</sup> Six respondents responded with at least one white woman.<sup>173</sup> Four respondents said that their group of friends consisted of all Black people.<sup>174</sup> And only three respondents reported at least one white man.<sup>175</sup> No one said all Black men. Black women law student’s interaction with people outside of their specified racial or gender group shows us multiple things. It demonstrates the likelihood that microaggressions are occurring. These interactions show that there is a lack of meaningful communication amongst students, and it shows that Black women are failing to expand their professional network in law school. The irony here is that networking was cited by one hundred percent (100%) of survey respondents as being the most effective tool for advancing one’s career. Yet, some Black women have neglected adequately acquainting themselves with people who are considered a law student’s future network—other law students.<sup>176</sup>

Survey respondents also reported, in high numbers, that they wanted to work in law firms in larger cities.<sup>177</sup> Considering the status of the legal profession at this point, the larger portion of a Black woman’s clients will be people of a different race, and majority of her work peers will be men. If Black women law students expect to succeed, they need to broaden their social circle to include people of other races, genders, and identities. Understandably, being a part of a small minority in law school could have the potential of making Black women seek out those who have shared experiences. However, they should check that such comfort does not become a crutch. Black woman can also participate in changing the way the legal profession affects them.

### III. CONCLUSION

It is safe to conclude that the Black woman’s experience in the legal profession can be identified as early as law school. We have been educating classes of lawyers who have been allowed to hide their opinions behind political correctness. We have consistently allowed law students to live in ignorance of their knowledge of others. Law schools have assigned easy and unoffending substantive topics, and have failed to educate students on the diverse identities of others—including some of their future clients. Considering that we have educated our lawyers in a way in which the status quo has consisted of an environment that has allowed silencing and implicit biases, we should

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<sup>168</sup> BWLS Survey, *supra* note 85.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

not have been surprised by the reality of women of color in law firms.<sup>178</sup> A Black woman's experiences in law school and in the legal profession will depend on many factors, from socioeconomic status, to sexual identity, to race, to gender. Using the type of survey conducted in this research piece, we may posit that Black women's experience in law school is problematic, at best. Therefore, whether the law school model can affect how Black women and other double-minority groups experience the profession once they graduate can only be answered by the implementation of change, and a validation of these experiences.

This survey project, while insightful, was very limited. The intent behind this study was to be a starting point, namely, to identify certain prevalent characteristics of Black women's experiences in law school. It consisted of 17 Black women law students from one law school in Michigan, and only explored answers from a specific set of questions. There are many more indicators of intersectionality than what has been illustrated here. Indeed, "exploring the multifaceted identities of women law students and, in particular, the complex relationship between gender and other aspects of their identities was identified by many as the next step in better understanding and eventually improving legal education."<sup>179</sup> Still, if this survey were to be conducted on a larger scale, I posit that it would still yield similar results.<sup>180</sup>

Frances Lee Ansley argues, "the rewards of . . . integration [of race in the law school's core curriculum] are worth the difficulties," and he concludes that "matters of racial justice, both past and present, are an indispensable part of minimal cultural literacy for American lawyers and legal scholars."<sup>181</sup> Thus, a healthy balance of discussion concerning race and gender issues as they relate to the law, including their relevance to the canon model, would be beneficial in educating lawyers. With this type of knowledge, lawyers may be more informed and more equipped to counsel the clients that they intend to serve. Not only will law students enter the profession with a better understanding of their clients, but those in hiring positions will have more knowledge about the lawyers they hire, and those with whom they work. In order to usher in the change that the legal profession requires, there needs to be a collaboration between law schools and the legal community as a whole. As Audre Lorde argued, if we attempt to recognize, discuss, and celebrate our differences from law school-to-law practice, we can build a stronger, more inclusive legal community.<sup>182</sup>

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<sup>178</sup> See generally GANS EPNER, *supra* note 28 (exploring the experiences of women of color who had worked at law firms).

<sup>179</sup> Wald, *supra* note 6, at 31.

<sup>180</sup> To ensure meaningful use of these results, legal scholars should check that future studies do not over-individualize, such that they fail to articulate a holistic conclusion as a result of too many experiences. These kinds of issues can make studying intersectionality complicated, but the benefits of such studies are invaluable.

<sup>181</sup> Ansley, *supra* note 10, at 1512.

<sup>182</sup> Audre Lorde, *Age, Race, Class, and Sex: Women Redefining Difference* in *SISTER OUTSIDER: ESSAYS AND SPEECHES*, 114 (Audre Lorde and Cheryl Clarke, eds., 1984).